

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 266/RPR/2014  
CO No.29/RPR/2015  
निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of Income Tax  
Central Circle, Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Devi Iron & Power Pvt. Ltd.  
Mahamaya Tower, 3<sup>rd</sup>& 4<sup>th</sup> Floor,  
In front of Anupam Nagar, Near,  
Varun Honda, G.E. Road,  
Raipur (C.G.)

PAN : AAECA3704G

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA  
Revenue by : Shri P.K Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing :03.08.2022  
घोषणा की तारीख / Date of Pronouncement :17.10.2022

आदेश / ORDER

**PER RAVISH SOOD, JM:**

The present appeal filed by the department is directed against the order passed by the CIT(Appeals), Raipur, dated 18.07.2014, which in turn arises from the order passed by the A.O under Sec. 153A r.w.s. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 27.03.2014 for assessment year 2010-11. Also the assessee is before us as a cross-objector. The department has assailed the impugned order on the following grounds of appeal before us:

- 1."On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.94000000/- made on account of share application/capital received as unexplained cash credits u/s. 68 of the Income Tax Act, 1961.
2. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the facts that the creditworthiness and the genuineness of the transactions has not been established by the appellant. There are evidence to the contrary produced by the department which establishes that the investors did not have the income earning apparatus and hence did not have creditworthiness.
3. On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.18488252/- made on account of suppression of production based on the lower yield declared by the assessee and hence corresponding unrecorded sale thereof.
4. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the investigation of facts and evidences on record to establish suppression of production by the assessee.
5. The CIT (A) has erred in passing the appellate order wherein he has acted in a perverse manner while passing the order which has

been made in haste without giving reasonable opportunity to the AO to give his submissions on the issues."

On the other hand the assessee as a cross-objector has raised the following grounds:-

"1. On the facts and in the circumstances of the case, the Learned A.O is not justified in preferring an appeal against the deletion of addition on account of addition to share capital/application when the matter is well covered by the decision of the jurisdictional High Court and jurisdictional Tribunal, particularly, when the addition was without any material/incriminating document.

2. On the facts and in the circumstances of the case, the Learned A.O is not justified in preferring an appeal against the deletion of addition on account of alleged suppression of production when the matter is well covered by the decision of the jurisdictional High Court and jurisdictional Tribunal, particularly, when the addition was without any material/incriminating document.

3. The respondent leave to add, urge, alter or withdraw any ground/ground(s) at the time or before the date of hearing."

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of sponge Iron had filed its return of income for the assessment year 2010-11 on 27.09.2010, declaring an income of Rs. Nil. Search and seizure proceedings u/s.132 of the Act were conducted at the business premises of various concerns and the residences of the individuals belonging to "Mahamaya Group". The assessee company being a group entity was also covered under the aforesaid search proceedings. Notice u/s.153A of the Act dated 04.05.2012 was issued to the assessee

company calling upon it to file its return of income for the aforesaid year under consideration i.e. A.Y. 2010-11. In compliance the assessee company filed its return of income u/s.153A on 08.08.2012 declaring its income as originally returned at Rs. Nil.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had during the year under consideration received share application money and share premium from a Kolkata based investor company as well as an in-house company, as under:

A.Y.	Name	Amount
2010-11	Calidora Traders Pvt. Ltd.	94000000
2010-11	Mahalaxmi Technocast Ltd. (an in-house company)	15000000

The A.O considering the aforesaid facts called upon the assessee to establish the identity, creditworthiness and genuineness of the transaction of receipt of share application money from the aforementioned parties. In reply, the assessee furnished details as were called for by the A.O. The A.O being of the view that the assessee company by placing on record supporting documentary evidences had duly discharged the onus that was cast upon it as regards the amount of Rs.1.50 crore that was received from its in-house company, viz. M/s Mahalaxmi Technocast Ltd., thus, accepted

its claim to the said extent. However, the A.O was not inclined to accept the claim of the assessee that it had raised genuine amount of share application money of Rs.9.40 crore from M/s. Calidora Traders Pvt. Ltd. It was observed by the A.O that in the course of search and seizure proceedings the search officials had looked for documents in the form of statutory records of the assessee company, viz. minutes of meeting register, share holders register, counter foils of issued share-certificates etc. which were required to be maintained at the registered office of the assessee company, but neither of the said documents were found. Also, the persons who were present at the registered office premises of the assessee company also could not provide satisfactory explanation as regards non-availability of the aforesaid documents/registers in their statements which was recorded on oath. Apart from that, it was observed by the A.O that the duly filled in share application forms which were supposed to be received from the share applicants a/w share application money were also found amiss at the registered office of the assessee company as well as its other premises. The A.O in order to verify the identity, creditworthiness and genuineness of the assessee's claim of having received share application money of Rs.9.40 crore from M/s. Calidora Traders Pvt. Ltd issued notice u/s. 133(6) dated 11.12.2013 to the aforesaid investor company, which, however, was returned unserved on 24.12.2013 with an endorsement of the postal authority that the

addressee had “left”. Considering the aforesaid facts the A.O called upon the assessee to substantiate the identity and creditworthiness of the shareholders, as well as the genuineness of the transaction of receipt of share application money from the aforesaid share applicant company, viz. M/s. Calidora Traders Pvt. Ltd. Although the notice that was issued to M/s Calidora Traders Pvt. Ltd. was initially returned unserved by the postal authorities with an endorsement that the addressee had “Left”, but the A.O was thereafter in receipt of a reply dated 19.03.2014 from the said investor company.

4. The A.O, thereafter, referring to the balance sheets of the shareholders of the assessee company, therein by way of a generalized observation negated the claim of the assessee company, and concluded that they did not have the creditworthiness to make investments of substantial amounts with the assessee company. It was further observed by him that the inflow of the funds in the garb of the share application money by the assessee company from all the shareholders in question was a managed affair in connivance with the said Kolkata based shareholder companies. In order to fortify his aforesaid conviction the A.O had drawn support from the fact that during the course of the search proceeding duly filled in share application forms and counter foils of share certificates which would in case of a genuine transaction would invariably have been

issued to the shareholders were neither found at the registered office of the assessee company nor from any other premises of its group entities. The A.O on the basis of his aforesaid observation called upon the assessee to show cause as to why the amount of Rs.9.40 crore received from M/s. Calidora Traders Pvt. Ltd may not be held as its unexplained cash credit u/s. 68 of the Act. In reply, it was submitted by the assessee that as it had placed on record complete details of the aforesaid share applicant a/w. supporting documentary evidences, viz. name and address, copy of PAN card, certificate of incorporation, memorandum of association, article of association, audited financial statement, income-tax return, bank statement (out of which share application money was paid), share application form and details of payment receipts, therefore, the primary onus that was cast upon it was duly discharged. However, the A.O was not inclined to accept the aforesaid explanation of the assessee. It was observed by the A.O that the aforesaid share applicant did not have its own profit-making apparatus and was not involved in any business activities but was merely involved in rotating of the money which was channelized through its banking accounts. The A.O, thus, was of the view that the bank accounts of the share applicant company did neither reveal its creditworthiness nor proved the genuineness of the transaction under consideration. Also the A.O was of the view that the investor company during the year under consideration was not in receipt of any dividend or

interest income. Thus, the A.O by relying on a plethora of judicial pronouncements concluded that the assessee company had failed to establish the identity, creditworthiness and genuineness of the transaction of receipt of share application money from the aforesaid investor company. It was further observed by him that merely for the reason that payment was received through banking channels would not conclusively prove the genuineness of the transaction and creditworthiness of the share applicant. Also, the A.O was of the view that certificate of incorporation of the company, payment through banking channels would not lead to discharge of the primary onus that was cast upon the assessee company. Accordingly, the A.O on the basis of his generalized observation, inter alia, held the amount of Rs. 9.40 crore that was received by the assessee company from M/s. Calidora Traders Pvt. Ltd as an unexplained cash credit u/s.68 of the Act. It was further observed by the A.O that a close examination of the affairs of the share applicant companies revealed that those were nothing but investment companies which thereafter had been acquired by its group.

5. Also, the A.O in the course of the assessment proceedings observed that incriminating material/evidences that had surfaced in the course of search and seizure proceedings revealed unaccounted production by the assessee company and a consequential suppression of its yield. It was

further observed by the A.O that the installed capacity and actual production of sponge iron from Iron Ore of the assessee company over the block period was as under:

F.Y	Sponge Iron	
	Installed capacity (in MT)	Actual Production (in MT)
2004-05	30000	3334.00
2005-06	30000	10205.94
2006-07	30000	7161.09
2007-08	30000	11.905.71
2008-09	30000	19211.22
2009-10	90000	35719.11
2010-11	90000	42983.60

It was observed by the A.O that now when the assessee company had not even been able to achieve 50% capacity utilization of its installed capacity of 3000 MT, then, it was beyond comprehension as to why it would go for further expansion and increase its capacity to 90000 MT and still not achieve production of even 25% of the enhanced installed capacity. The A.O, thereafter, referred to the quantitative production details of the assessee company, as under:

F.Y.	Turnover (In lacs)	Turnover (in MT)	Total Production	Total Iron Ore	Total power	Iron Ore per unit of	Yield%	Power consumed
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			(in MT)	consumed (in MT)	consumed (in Kwh)	production		per unit of production ( kwh/MT)
2005-06	993.55	9407.955	10205.945	16361.777	1130760	1.603	62.38	110.79
2006-07	1395.91	8111.000	7161.090	12552.437	1464586	1.753	57.05	204.52
2007-08	2233.18	12161.650	11905.710	24618.000	1733240	2.068	48.36	145.58
2008-09	2855.16	19275.940	19211.220	34092.025	2252064	1.775	56.35	117.23
2009-10	5055.75	34627.070	35719.110	59520.02	3026780	1.666	60.01	84.74
2010-11	7610.07	41312.930	42983.600	77831.978	4779000	1.811	55.23	111.18
Total	20143.62		127186.68	224976.24	1486430			

The A.O holding a conviction that the quantitative production of sponge iron would be proportionate to the consumption of Iron Ore and coal, thus, inter alia, for the year under consideration worked out the month wise details, as under:

Month	Sponge Iron Production ( in MT)	Iron Ore	
		Consumption (in MT)	Yield %
April, 09	2342.880	3944.940	0.59
May, 09	1764.930	3122.590	0.57
June, 09	1878.500	3099.040	0.61
July, 09	2533.980	4142.010	0.61
August, 09	1888.370	3344.790	0.56
September,09	2159.490	3670.460	0.59
October, 09	2665.020	4517.290	0.59

November, 09	3480.140	5930.270	0.59
December, 09	3962.670	6581.470	0.60
January, 10	4299.520	7067.420	0.61
February, 10	4397.680	7043.780	0.62
March, 10	4345.930	7055.960	0.62
	35,719.110	59,520.020	0.58

The A.O observing that no uniform co-relation between the iron ore consumption and sponge iron production could be gathered on the basis of the details as were compiled for the period FY 2006-07 to FY 2010-11, therefore, resorted to year wise/month wise details of consumption of coal and production of sponge iron which, inter alia, for the year under consideration was as under:

F.Y. 2009-10 :

Month	Sponge Iron Production ( in MT)	Iron Ore	
		Consumption (in MT)	Yield %
April, 09	2342.880	4250.230	0.55
May, 09	1764.930	2988.710	0.59
June, 09	1878.500	3161.120	0.59
July, 09	2533.980	4230.610	0.60
August, 09	1888.370	3496.700	0.54
September, 09	2159.490	4068.440	0.53
October, 09	2665.020	4638.870	0.57

November, 09	3480.140	6133.800	0.57
December, 09	3962.670	6681.120	0.59
January, 10	4299.520	6718.450	0.64
February, 10	4397.680	5955.310	0.74
March, 10	4345.930	6102.140	0.71
	35,719.110	58425.500	0.60

Once again, it was observed by the A.O that there was no specific co-relation between the coal consumption and sponge iron production. On the basis of his aforesaid deliberations the A.O concluded that there was a vast variation in consumption of iron ore per unit of production and consumption of coal per unit of production. On the basis of aforesaid facts, the A.O culled out the highest and lowest consumption of iron ore and coal per unit of production of sponge iron for the block period, as under:

FY	Iron Ore				Coal			
	Highest yield		Lowest yield		Highest coal consumption per unit of production		Lowest coal consumption per unit of production	
	Month	Yield	Month	Yield	Month	Consumption	Month	Consumption
2006-07	June	0.57	May	0.56	Sep	0.72	Nov	0.70
2007-08	Dec	0.52	Mar	0.39	Jan	0.64	Feb	0.61
2008-09	Apr	0.64	Jan	0.41	Jul	0.64	Nov	0.47
2009-10	Mar	0.62	Aug	0.56	Feb	0.74	Sep	0.53
2010-11	Apr	0.61	May	0.54	Jun	0.64	Oct	0.48

It was, thus, observed by the A.O that consumption of Iron Ore per unit of production was as high as 64% in April, 2008 and as low as 41% in January, 2009. Similarly, the consumption of coal was very high in February 2010 i.e. 0.74 and as low as 0.47 in the month of November, 2009. It was observed by the A.O that yield shown in different years under consideration also varied over the years, as under:

Financial Year	Yield of Sponge Iron (in %)
2005-06	62.38
2006-07	57.05
2007-08	48.36
2008-09	56.35
2009-10	60.01
2010-11	55.23

The A.O was of the view that the aforesaid variances suggested that the books of account of the assessee company did not reveal the true and correct picture of its business affairs. Also, the A.O in order to support his aforesaid conviction that the assessee had suppressed its yield relied on the fact that in the course of search proceedings excess stock of Rs.6,28,24,704/- was found. Considering the aforesaid facts the A.O held the books of account of the assessee as unreliable, and concluded that the

yield of sponge iron could safely be taken as per average yield of 60% that was prevalent in the iron order industry. Accordingly, the A.O by adopting the yield at 60% in the hands of the assessee, therein, worked out suppressed yield for the period i.e. FY 2006-07 to F.Y 2011-12, as under:

FY	Total production (MT)	Total Iron Ore consumed (in MT)	Yield (%)	Production with yield of 60% (in MT)	Difference in production in MT	Average rate of sponge iron (in Rs.)	Difference in production (in Rs.)
2006-07	7161.09	12552.44	57.05	7531.46	370.37	19493	7219622.41
2007-08	11905.71	24618	48.36	14770.8	2865.09	18757.228	53741146.38
2008-09	19211.22	34092.03	56.35	20155.22	1244	14861.93917	18488252.33
2010-11	42983.6	77831.98	55.23	46699.19	3715.59	17704.59503	65783016.24
2011-12	39275.76	65050.02	60.37	39330.01	(245.75)	21504.00	Nil
				Total	8195.04		14,52,32,037

6. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) found favour with the contentions advanced by the assessee, and observed, that there was no basis for the A.O to have adopted the yield of sponge iron at 60%. Considering the aforesaid claim of the assessee the CIT(Appeals) called for a remand report from the A.O as regards the yield which was declared by similarly placed assessee's. On the basis of the details which were made available by the A.O, it was observed by the CIT(Appeals) that there was no uniformity in the yield declared by different assessee's. Also, it was observed by him that the yield of the assessee company was more than the average yield in the

iron ore industry. Accordingly, the CIT(Appeals) on the basis of his exhaustive deliberations vacated the adverse inferences and the consequential addition of Rs.1,84,88,252/- that was made by the A.O towards low/suppressed yield of Iron ore.

7. As regards the addition that was made by the A.O with respect to the share application money of Rs.9.40 crore that was received by the assessee company from M/s. Calidora Traders Pvt. Ltd., it was observed by the CIT(Appeals) that though it was alleged by the A.O that during the course of search proceeding the statutory records of the assessee company, viz. minutes of meeting register, shareholders register, counter foils of issued share certificates etc. were not found at the registered office of the assessee company, but a perusal of the statements recorded u/s.132(4) of the Act, nowhere revealed that any official of the search team had in the course of the said proceedings had visited the registered office of the assessee company. Also, it was observed by the CIT(Appeals) that the statement of the other persons belonging to the group companies also did not reveal that the assessee company had not maintained any statutory records/register. It was also observed by the CIT(Appeals) that the A.O had merely on the basis of an unsubstantiated allegation claimed that the aforesaid statutory records of the assessee company were not found in the course of the search proceedings at the registered office premises of the

assessee company. The CIT(Appeals) was of the view that it was not the case of the department that the search team had visited the registered office premises of the assessee company and had specifically queried about the statutory records which latter had failed to produce or had expressed its inability to produce, or had admitted of not having maintained the same. On the contrary, it was observed by the CIT(Appeals) that Ms. Jaswinder Kaur Mission in her statement recorded u/s.132(4) on 21.06.2011 had specifically shown the members register, share certificates and counter foils of the assessee company to the search officials. Accordingly, the CIT(Appeals) on the basis of his aforesaid observation vacated the adverse inferences that were drawn by the A.O that the assessee had failed to maintain the statutory records at its registered office.

8. Adverting to the amount of Rs. 9.40 crore that was claimed by the assessee company to have been received as share application money from M/s. Calidora Traders Pvt. Ltd., the assessee had filed with the CIT (Appeals) a copy of the assessment order that was passed in the case of the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd. for A.Y.2006-07. It was observed by the CIT(Appeals) that M/s. Calidora Traders Pvt. Ltd. was assessed u/s.143(3) by the ITO, Ward-1(1), Kolkata, wherein he had categorically observed that the said company had share

capital and share premium reserves of Rs.45 lacs and Rs.10.51 crore, respectively, as on 31.03.2006. It was observed by the CIT(Appeals) that the ITO, Ward-1(1), Kolkata had issued notice u/s.133(6) to the various shares holders of the M/s. Calidora Traders Pvt. Ltd. and had carried out necessary enquiries and verification. The CIT(Appeals) observed that the ITO, Ward-1(1), Kolkata only on being satisfied with the genuineness of the addition which was made to share capital and reserves of the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd. had accepted the same and not drawn any adverse inferences. Apart from that, it was observed by him that the financial statements of the aforesaid share applicant company further substantiated its creditworthiness. Considering the aforesaid facts, the CIT(Appeals) was of the view that there was no justification on the part of the A.O in drawing any adverse inferences as regards the identity and creditworthiness of the aforesaid share applicant company, viz. M/s Calidora Traders Pvt. Ltd. whose share capital and reserves i.e. net worth was accepted in the course of scrutiny assessment that was framed in its case u/s 143(3) of the Act. Accordingly, the CIT(Appeals) was of the view that the assessee company had not only explained the source of receipt of share application/capital money but had also explained the source of source by placing on record assessment order in the case of its subscriber company, viz. M/s. Calidora Traders Pvt. Ltd. The CIT(Appeals) further observed that as the assessee in order to

substantiate the authenticity of the aforesaid transaction of receipt of share application money from the aforesaid subscriber company viz. M/s. Calidora Traders Pvt. Ltd. had placed on record clinching documentary evidences, viz. confirmation a/w. duly notarized affidavit, copies of share application form, audited financial statement, copies of return of income and bank statement of the aforesaid investor company, therefore, there was no justification for the A.O to have summarily rejected the same and drawn adverse inferences as regards the authenticity of the claim of the assessee of having received genuine share application money from the aforesaid party without placing on record any material proving to the contrary.

9. Rebutting the adverse inferences that were drawn by the A.O as regards the assessee's claim of having received genuine share application money from the aforesaid investor, for the reason that notice which was issued u/s.133(6) of the Act was returned back as unserved, it was observed by the CIT(Appeals) that as the A.O himself had referred to the reply which was subsequently filed by the aforesaid investor company, therefore, the aforesaid adverse inferences did not survive any more. It was further observed by the CIT(Appeals) that the A.O had not carried out any enquiry or investigation as regards the aforesaid claim of the assessee of having received share application money from the aforementioned party,

and instead of bringing the same to a logical end had summarily rejected the assessee's claim and dubbed the entire amount as an unexplained cash credit u/s.68 of the Act. Relying on the judgments of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (P) Ltd. 216 CTR 195 (SC) and also the judgment of the Hon'ble High Court of Chhattisgarh in the case of ACIT Vs. Venkateshwar Ispat (P) Ltd, 319 ITR 393, the CIT(Appeals) concluded that now when the investment made by the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd. was duly reflected in its audited financial statements, therefore, no adverse inferences were liable to be drawn as regards the same in the hands of the assessee company. Also, the CIT(Appeals) was of the view that there was no justification on the part of the A.O to have rejected the substantial documentary evidences which were placed on record by the assessee company to support his aforesaid claim of having received genuine share application money from the aforesaid investor company, viz. confirmation of the share applicant, PAN details, certificate of incorporation of the subscriber company, records of the Registrars of the Companies (ROC) (generated from website), affidavit filed in support of the fact of advancing share applications money received by the assessee company through banking channels. Noticing that the share applicant company in question, viz. M/s. Calidora Traders Pvt. Ltd. was active as per the website of the Ministry of Corporate Affairs and was duly registered with the ROC, the

CIT(Appeals) was of the view that the said facts further dispelled the doubts as were raised as regards the authenticity of the transaction in question. It was observed by the CIT(Appeals) that the A.O had not placed on record any material which would dislodge the authenticity of the assessee's claim of receiving aforesaid amount of share application money. Also, it was noticed by him that contents of the affidavit filed by the share subscriber company had also not been disputed by the A.O. Accordingly, the CIT(Appeals) found favour with the claim of the assessee company that now when the identity, creditworthiness of the share applicant, and also the genuineness of the transaction had been proved to the hilt on the basis of clinching documentary evidences, which had not been disproved or dislodged by the A.O, therefore, there was no justification on his part in treating the aforesaid amount of Rs.9.40 crore as unexplained cash credit u/s.68 of the Act. On the basis of his aforesaid deliberations the CIT(Appeals) vacated the addition of Rs.9.40 crores made by the A.O u/s.68 of the Act.

10. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

11. We have heard the Ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements

that have been pressed into service by them to drive home their respective contentions.

12. We have given a thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both the parties in context of the aforesaid issue in hand, i.e., sustainability of the view taken by the CIT(Appeals) as regards the authenticity of the share application money of Rs.9.40 crore that was received by the assessee from M/s. Calidora Traders Pvt. Ltd.

13. As observed by us hereinabove, it is a matter of fact borne from record that the assessee company had claimed to have received an amount of Rs.9.40 crore as share application money from the aforesaid investor company, viz. M/s. Calidora Traders Pvt. Ltd. On being queried about the nature and source of the said credit appearing in its books of account, the assessee in order to substantiate the authenticity of its claim of having received the aforementioned amount as share application money from the aforementioned investor company, viz. M/s Calidora Traders Pvt. Ltd. had ,inter alia, filed with the A.O documentary evidences substantiating the identity and creditworthiness of the share applicant company, as well as the genuineness of the transaction under consideration, viz. name and address of the share applicant, PAN details, certificate of incorporation, memorandum of association, article of association, audited financial

statement, income-tax return, bank statement (out of which share application money was paid), share application form and details of receipt of amount through banking channels. As observed by the CIT(Appeals) and, rightly so, the assessee company had discharged the onus that was cast upon it as regards proving the identity, creditworthiness of the share applicant, and also the genuineness of the transaction in question. However, we find that the A.O without rebutting the aforesaid documentary evidence that was filed by the assessee by placing on record any material proving to the contrary, had in all his wisdom on the basis of generalized observations, and without refuting the assessee's claim on any concrete basis, had most arbitrarily drawn adverse inferences and held the aforesaid amount of Rs.9.40 crore as an unexplained cash credit u/s.68 of the Act.

14. On a perusal of the assessment order it transpires that the A.O on the basis of a consolidated order for AY 2006-07 to AY 2012-13 had made generalized unsubstantiated observations as regards the financial statements of the various share holders of the assessee company, and without dealing with the facts involved in the respective cases had drawn adverse inferences by alleging that the inflow of the share application money in the hands of the assessee company was to be viewed in the perspective of money laundering through share capital route in which

unaccounted money was being routed back to its books of account without payment of due tax. On the aforesaid basis, it was observed by the A.O that the inflow of the funds in the garb of share application money was in fact a managed affair in connivance with the Kolkata based shareholder companies. In order to buttress his aforesaid generalized adverse inferences the A.O had observed that the unavailability of the statutory records of the assessee company in the course of the search proceedings at its registered office or any other premises in the occupation of its group entities supported the fact that the assessee company had not raised any genuine share application money from the investor company. On a perusal of the aforesaid observation of the A.O, it transpires that he instead of placing on record any clinching material which would have otherwise dislodged and disproved the assessee's claim of having raised genuine share application money from the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd., had instead chosen to be guided by general observations for drawing of adverse inferences and summarily rejecting the same. We are afraid that the approach adopted by the A.O can by no means be accepted. In fact, we would have no hesitation to observe that the A.O except for harping on his generalized adverse inferences and heavily relying on certain excerpts of modus operandi that was in general adopted by accommodation entry providers to facilitate their nefarious activities of laundering the unaccounted money of certain companies, had

however not uttered a single word as to on what basis the audited financial statements and the other documentary evidences which were filed by the assessee to substantiate the authenticity of the aforesaid claim of the assessee were being discarded by him. As observed by the CIT(Appeals) and, rightly so, the assessee company had not only placed on record documentary evidence substantiating the nature and source of the amount of Rs.9.40 crore that was received as share application money from the aforementioned share applicant company, but had even demonstrated before the A.O that the source of the investment made by the said share applicant company, viz. M/s. Calidora Traders Pvt. Ltd. had been accepted by the ITO, Ward-1(1), Kolkata while framing the assessment in the latter's case u/s. 143(3) of the Act. As observed by the CIT(Appeals), and, rightly so, now when the aforesaid investor company, viz. M/s. Calidora Traders Pvt. Ltd. had filed before the A.O the assessment order that was passed in its case, wherein its share capital and share premium reserves of Rs.45 lacs and 10.51 crore (approx.) as on 31.03.2006 were accepted by the A.O after carrying out necessary enquiries, therefore, the same proved to hilt the source of source of the investment under consideration. In our considered view, there is substance in the claim of the assessee that now when the genuineness of the addition which was made to the share capital and reserves of the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd. after necessary vetting had been accepted by the ITO, Ward-1(1),

Kolkata, therefore, no adverse inferences as regards the investment made by the latter in the assessee company out of the said source which had duly been accepted by the department could have been drawn. Also, we concur with the view taken by the CIT(Appeals) that now when the assessee had duly discharged the onus that was cast upon it as regards proving the nature and source of the credit appearing in its books of account, i.e. share application money of Rs. 9.40 crore that was received from the investor company by placing on record supporting documentary evidences, viz. name and address, PAN details, certificate of incorporation, memorandum of association, article of association, audited financial statement, income-tax return, bank statement (out of which share application money was paid), share application form and details of receipt of amount through banking channels, therefore, the A.O could not have drawn adverse inferences as regards the authenticity of the said transaction without dislodging the aforesaid claim of the assessee on the basis of any such material which would have irrefutably proved to the contrary.

15. As regards the observation of the A.O that during the course of search proceeding the statutory records of the assessee company, viz. minutes of meeting register, shareholders register, counter foils of issued share certificates etc. were not found at the registered office of the assessee

company, we find that the CIT(Appeal) had vacated the same on the ground that a perusal of the statements recorded u/s.132(4) of the Act, nowhere revealed that any official of the search team in the course of the said proceedings had visited the registered office of the assessee company. It was further observed by the CIT(Appeals) that the statement of the other persons belonging to the group companies also did not reveal that the assessee company had not maintained any statutory records/registers. It was also noticed by the CIT(Appeals) that the A.O had merely on the basis of an unsubstantiated allegation claimed that the aforesaid statutory records of the assessee company were not found in the course of the search proceedings at the registered office premises of the assessee company. Accordingly, the CIT(Appeals) was of the view that it was not the case of the department that the search team had visited the registered office premises of the assessee company and had specifically queried about the statutory records which latter had failed to produce or had expressed its inability to produce, or had admitted of not having maintained the same. On the contrary it was observed by the CIT(Appeals) that Ms. Jaswinder Kaur Mission, employee of the assessee company had in her statement recorded u/s.132(4) on 21.06.2011 specifically shown the members register, share certificates and counter foils of the assessee company to the search officials. Accordingly, the CIT(Appeals) on the basis of his aforesaid observation had vacated the adverse inferences that were

drawn by the A.O on the ground that the assessee had failed to maintain the statutory records at its registered office.

16. Nothing is discernible from the records before us which would reveal that the aforesaid observations of the CIT(Appeals) are either perverse or contrary to the facts available on record. Also, the ld. D.R during the course of hearing of the appeal had failed to rebut the aforesaid observation of the CIT(Appeals). Considering the aforesaid facts we have no hesitation in concurring with the view taken by the CIT(Appeals) that the adverse inferences and the consequential addition made in the hands of the assessee cannot be sustained on the basis of the aforesaid unsubstantiated allegation of the A.O. In fact the claim of the assessee that Ms. Jaswinder Kaur Mission (supra) had in her statement recorded u/s.132(4) on 21.06.2011 specifically shown the members register, share certificates and counter foils of the assessee company to the search officials fortifies the aforesaid claim of the ld. A.R that the requisite documents/registers were duly maintained by the assessee at its registered office. We, thus, in terms of our aforesaid observations uphold the view taken by the CIT(Appeals) who had rightly vacated the adverse inferences drawn by the A.O as regards the alleged non-maintenance of members register, share certificates and counter foils of share certificates allotted by the assessee company.

17. Accordingly, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who in our considered view had rightly vacated the unsubstantiated adverse inferences that were drawn in the thin air by the A.O as regards the genuineness and authenticity of the assessee's claim of receipt of share application money of Rs.9.40 crore, therefore, uphold his order to the said extent. Thus, the **Grounds of appeal No.1 & 2** raised by the revenue are dismissed in terms of our aforesaid observations.

18. We shall now deal with the addition of Rs. 1,84,88,252/- that was made by the A.O towards suppressed yield of sponge iron in the hands of the assessee company. As observed by us hereinabove, the A.O by adopting the average yield of sponge iron of 60% as a yardstick had made an addition of Rs. 1,84,88,252/- (supra) in the hands of the assessee company. On appeal, the CIT(Appeals) observed that not only there was any basis for adoption of the yield @60% as a yardstick by the A.O, but even otherwise there was no uniformity in the yield of sponge iron amongst similarly placed players in the industry. Apart from that, it was observed by him that the yield of the assessee company was better than the average yield prevailing in the iron ore industry.

19. Interestingly, we find that though the A.O vide his order passed u/s.153A r.w.s 143(3), dated 27.03.2014 had for the year under consideration i.e. A.Y. 2010-11 made an addition towards suppressed yield of Rs.1,84,88,252/-, but the same militates against the facts which are discernible from the assessment order itself. On a perusal of the aforesaid “chart” culled out by the A.O at Page 37 of the assessment order, it transpires that the A.O observing that the yield of sponge iron in the case of the assessee for the year under consideration i.e. A.Y 2010-11 was 60.02%, and thus, better than the yardstick of 60% yield that was adopted by him, therefore, had not worked out any suppression in its case. But strangely, while quantifying the assessed income he had o the said count at Page 38 of the assessment order made an addition of Rs.1,84,88,252/-.

On a careful perusal of the assessment order it transpires that the impugned addition of Rs.1,84,88,252/- pertains to the impugned suppressed yield in the case of the assessee for the preceding year i.e. AY 2009-10 and does not pertain to the year under consideration. Considering the aforesaid facts we are unable to comprehend as to on what basis the impugned addition has been made by the A.O while framing the assessment in the case of the assessee company for the year under consideration i.e AY 2010-11. Also, we may herein observe that during the course of hearing of the appeal neither of the parties had brought to our notice the aforesaid serious infirmity which in fact goes to the very root of

the controversy in hand, i.e., the impugned suppression of yield of sponge iron production for the year under consideration.

20. Be that as it may, we are of the considered view that now when the A.O himself had worked out the sponge iron yield in the case of the assessee at 60.02% i.e. higher than the average yield in the iron ore industry of 60% which was adopted by him as a yardstick, and thus, had not drawn any adverse inferences in so far the year under consideration i.e period relevant to A.Y 2010-11 is concerned, which can safely be gathered from the chart at Page 37 to 39 of the assessment order, therefore, the very basis of the controversy leading to the impugned addition of Rs.1,84,88,252/- in itself falls to ground. We, thus, in terms of our aforesaid observations are of the considered view that now when the very basis of the grievance of the revenue raised vide Ground of appeal No.3 before us is based on misconceived facts, thus, the same would not survive. We may herein observe that not only both the lower authorities had failed to take cognizance of the aforesaid serious infirmity and had allowed it to perpetuate as such, but what is incomprehensible and rather strange is that even in the course of the proceedings before us neither the Ld. Authorized Representative for the assessee nor the Ld. Departmental Representative had pointed out the same to us. Be that as it may, as the grievance of the revenue is based on misconceived facts which clearly

militates against the facts discernible from the assessment order, which reveals that the yield of sponge iron of the assessee company during the year under consideration i.e A.Y 2010-11 was 60.02% i.e better than the yardstick of 60% that was adopted by the A.O. therefore, the very basis of the grievance of the revenue does not survive. Accordingly, the **Ground of appeal No.3** raised by the revenue being not maintainable is accordingly dismissed.

21. **Ground of appeal No.5** being general in nature is dismissed as not pressed.

22. In the result, appeal of the revenue in ITA No.266/RPR/2014 for the A.Y.2010-11 being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

**CO No.29/RPR/2015**  
**A.Y.2010-11**

23. As the cross-objection filed by the assessee company is merely supportive of the order of the CIT(Appeals) and in fact, by filing the same, the assessee has assailed the addition made by the A.O on the aforesaid issues, viz. (i). addition on account of share capital/share application money ; and (ii). addition towards suppressed yield of sponge iron, which issues have already been adjudicated by us hereinabove while disposing off

the appeal of the revenue, therefore, the cross-objection filed by the assessee having been rendered as academic in nature are dismissed.

24. In the result, cross-objection filed by the assessee in CO No.29/RPR/2015 for A.Y. 2010-11 is dismissed in terms of our aforesaid observations.

25. In the combined result, both the appeal filed by the revenue and cross-objection filed by the assessee are dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 17<sup>th</sup> October, 2022

\*\*\*SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The CIT(Central), Bhopal (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.